

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Georgia Rochon	Team: Squad #2	CCRB Case #: 201904455	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/21/2019 1:00 PM	Location of Incident: East 164th Street and Jerome Avenue; and the 44th Precinct stationhouse	Precinct: 44	18 Mo. SOL 11/21/2020	EO SOL 7/8/2021	
Date/Time CV Reported Wed, 05/22/2019 3:20 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/22/2019 3:20 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. CPT Julio Delgado	00000	918927	SRG 2
2. POM Raymond Pena	03342	962007	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Justen Fernandez	19605	966572	044 PCT
2. POM Frankie Dodd	00195	954741	044 PCT
3. SGT Christian Alcantara	00702	937955	044 PCT
4. POM Stephen Rasulo	11631	951118	044 PCT
5. POM Vincent Dempsey	10828	966538	044 PCT
6. POM Ali Hussain	17006	960697	044 PCT
7. POF Alysha Johnson	18442	958727	044 PCT
8. POM Ivan Angeles	06975	948619	044 PCT
9. POM Steven Palladino	18198	947320	SRG 5
10. SGT Alfonsina Delacruz	5059	932538	044 PCT
11. POM Todd Jacoby	31546	932819	044 PCT
12. POM John Latanzio	08320	963599	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.CPT Julio Delgado	Abuse: At East 164th Street and Jerome Avenue in the Bronx, Captain Julio Delgado stopped § 87(2)(b)	
B.CPT Julio Delgado	Abuse: At East 164th Street and Jerome Avenue in the Bronx, Captain Julio Delgado stopped § 87(2)(b)	
C.CPT Julio Delgado	Abuse: At East 164th Street and Jerome Avenue in the Bronx, Captain Julio Delgado searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.CPT Julio Delgado	Abuse: At East 164th Street and Jerome Avenue in the Bronx, Captain Julio Delgado seized § 87(2)(b)'s property.	
E.CPT Julio Delgado	Abuse: At the 44th Precinct stationhouse, Captain Julio Delgado searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
F.POM Raymond Pena	Abuse: Police Officer Raymond Pena failed to provide § 87(2)(b) with a business card.	

Case Summary

On May 22, 2019, § 87(2)(b) filed this complaint with the CCRB over the phone.

On May 21, 2019, at approximately 1:00 p.m., § 87(2)(b) and her boyfriend, § 87(2)(b) parked § 87(2)(b)'s vehicle in a no-standing zone at the intersection of East 164th Street and Jerome Avenue in the Bronx (Board Review 26). With § 87(2)(b) in the driver's seat and § 87(2)(b) in the passenger's seat, they fell asleep. A pedestrian flagged down Captain Julio Delgado of Strategic Response Group 2 and informed him that two people were slumped over in a parked car, whose rear was sticking approximately three feet into traffic. Captain Delgado radioed for the 44th Precinct Patrol Supervisor, Sergeant Christian Alcantara, who arrived on scene with his operator, Police Officer Frankie Dodd of the 44th Precinct.

The officers approached § 87(2)(b) and § 87(2)(b) and woke them. They asked if they were alright, and requested that they exit the vehicle (**Allegations A and B—Abuse of Authority—Stop—§ 87(2)(g)**). They did so, and § 87(2)(b) provided his license to the officers. The officers allegedly searched the vehicle (**Allegation C—Abuse of Authority—Vehicle search—§ 87(2)(g)**), after which § 87(2)(b)'s license was determined to be suspended. § 87(2)(b) was arrested, and Captain Delgado determined that § 87(2)(b)'s vehicle would be taken to the stationhouse for safekeeping (**Allegation D—Abuse of Authority—Property seizure—§ 87(2)(g)**).

At the stationhouse, Police Officer Dodd and Police Officer Justen Fernandez of the 44th Precinct searched and inventoried § 87(2)(b)'s vehicle (**Allegation E—Abuse of Authority—Vehicle search—§ 87(2)(g)**). Approximately six hours after the vehicle was brought to the stationhouse, § 87(2)(b) was allowed to retrieve it, during which time she allegedly asked Police Officer Raymond Pena of the 44th Precinct for a business card, which he did not provide (**Allegation F—Abuse of Authority—Failure to provide RTKA card—§ 87(2)(g)**).

§ 87(2)(b)'s vehicle was ultimately issued a parking summons for violating New York City Department of Transportation Traffic Rule §4-08 (f)(1) (double parking) by parking three feet from the curb (Board Review 22). § 87(2)(b) ultimately received a Desk Appearance Ticket for § 87(2)(b) (Board Review 27).

Body-worn camera (BWC) footage was obtained in the course of this investigation. It is located in IAs #114-122 (Board Reviews 04-12) and is summarized in IA #123 (Board Review 13). Stationhouse footage from the 44th Precinct stationhouse is located in IAs #78-80 (Board Reviews 15-17) and is summarized in IA #81 (Board Review 18).

Findings and Recommendations

Allegation (A) – Abuse of Authority: At East 164th Street and Jerome Avenue in the Bronx, Captain Julio Delgado stopped § 87(2)(b)

Allegation (B) – Abuse of Authority: At East 164th Street and Jerome Avenue in the Bronx, Captain Julio Delgado stopped § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were interviewed at the CCRB on May 24, 2019. § 87(2)(b) provided a follow up telephone statement on June 6, 2019 (Board Review 14). Police Officer Dodd was interviewed at the CCRB on June 13, 2019. Sergeant Alcantara was interviewed at the CCRB on June 24, 2019. Police Officer Fernandez was interviewed at the CCRB on July 19, 2019. Captain Delgado was interviewed at the CCRB on August 1, 2019. Police Officer Todd Jacoby of the 44th Precinct was interviewed at the CCRB on August 14, 2019. Police Officer Michael Sheridan of the 44th Precinct was interviewed at the CCRB on August 26, 2019. Police Officer John Latanzio of the 44th Precinct was interviewed at the CCRB on September 6, 2019. Police Officer Pena was interviewed at the CCRB on September 18, 2019.

It is undisputed that § 87(2)(b) and § 87(2)(b) had stopped § 87(2)(b)'s vehicle in a no-standing zone at the intersection of East 164th Street and Jerome Avenue in the Bronx on May 21, 2019, and that the vehicle was positioned such that the back of the car was more than one foot from the curb. § 87(2)(b) and § 87(2)(b) ate lunch seated in the front seats, then fell asleep with § 87(2)(b) in the driver's seat and § 87(2)(b) in the passenger's seat. When § 87(2)(b) awoke, she observed Sergeant Alcantara, who was standing by her door and asking her to step out of the vehicle. He also asked her if she was on drugs. § 87(2)(b) responded that she was not and exited the vehicle. § 87(2)(b) exited the vehicle as well, and Captain Delgado asked § 87(2)(b) for his driver's license, which he provided.

§ 87(2)(b) § 87(2)(g) awoke to officers opening the driver's side door asking him if he was alright, and if he had consumed any alcohol or drugs. § 87(2)(b) responded that he had not, and was asked to exit the vehicle. He did so, and was informed by Captain Delgado that they had received a call about people sleeping in an improperly parked vehicle. § 87(2)(b) was asked for his driver's license, and provided his license when he was asked for it.

Captain Delgado testified that he was driving in his police vehicle when he was flagged down by a civilian who reported two people passed out in the front seats of a vehicle at East 164th Street and Jerome Avenue. Captain Delgado responded to the location, at which time he observed § 87(2)(b) and § 87(2)(b) with their heads tilted and their mouths open in the front seats and radioed for Sergeant Alcantara. Once Sergeant Alcantara and Police Officer Dodd arrived, they approached the vehicle. The driver's side window was open, and § 87(2)(b) and § 87(2)(b) woke up as the officers approached. Sergeant Alcantara asked them if they were alright, and asked them to exit the vehicle, which they did.

Sergeant Alcantara's testimony was largely consistent with Captain Delgado's. After receiving the radio run, Sergeant Alcantara arrived on scene with Police Officer Dodd and they approached the vehicle. Sergeant Alcantara knocked on § 87(2)(b)'s window, and both § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) woke up. Sergeant Alcantara believed § 87(2)(b) opened the door, after which Sergeant Alcantara asked them if they were alright, and stated they had approached because their vehicle was interrupting the flow of traffic. Sergeant Alcantara asked both civilians to exit the vehicle and asked § 87(2)(b) if he had been drinking, to which § 87(2)(b) responded that he had not been. Both civilians exited the vehicle, and an officer asked § 87(2)(b) for his license.

Police Officer Dodd's testimony was consistent with Sergeant Alcantara's, except in that Police Officer Dodd initially approached the driver's side window and asked § 87(2)(b) if he was alright, and Police Officer Dodd recalled that he was the officer who obtained § 87(2)(b)'s license.

Body-worn camera (BWC) footage of the incident largely confirms the officer testimony regarding the initiation of this interaction. Sergeant Alcantara's footage shows the officers approaching the vehicle, with Sergeant Alcantara going towards the passenger side and Captain Delgado and Police Officer Dodd speaking to § 87(2)(b) on the driver's side. The officers ask the civilians if they are alright, then ask them to exit the vehicle. Once standing on the curb, Sergeant Alcantara asks them both if they've been drinking or using drugs, and they respond that they have not been. They are informed they are parked three feet from the curb, and § 87(2)(b) provides his driver's license upon request (Board Review 04).

New York State VTL Code 1203(a) states that "Except where angle parking is authorized, every vehicle stopped, standing or parked...shall be so stopped, standing or parked with the right-hand wheels of such vehicle parallel to and within twelve inches of the right-hand curb or edge of the roadway (Board Review 20).

In People v. Francis, 12 Misc. 3d 781 (2006), the circumstances of which are largely analogous to those at hand in this case, the court found that an officer is permitted to stop a vehicle if he reasonably suspects that an occupant of the vehicle is violating the law, including VTL law, after which the officer is entitled to request the operator's license and registration, and order the occupants of the vehicle to stand outside the vehicle (Board Review 21).

§ 87(2)(g)
[REDACTED]

Allegation (C) – Abuse of Authority: At East 164th Street and Jerome Avenue in the Bronx, Captain Julio Delgado searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (D) – Abuse of Authority: At East 164th Street and Jerome Avenue in the Bronx, Captain Julio Delgado seized § 87(2)(b) s property.

The officers conducted a computer check on § 87(2)(b) s license, and determined it was suspended, at which point § 87(2)(b) was placed under arrest. § 87(2)(b) recalled that Captain Delgado requested her license after § 87(2)(b) was handcuffed, and she provided it. She was informed that her vehicle was going to be taken to the stationhouse, and when she explained that the car belonged to her and that she had a valid license, she was told that her license would be run at the stationhouse and that she would be able to retrieve her car shortly. Officers entered her car and drove it to the stationhouse while § 87(2)(b) walked.

§ 87(2)(b) testified that the officers opened § 87(2)(b) s trunk and searched inside the vehicle immediately after taking his license. After this search, his license was run, and he was placed under arrest for driving with a suspended license. Before he was taken to the stationhouse, § 87(2)(b) heard Captain Delgado instruct the officers to bring § 87(2)(b) s vehicle to the stationhouse to search it. § 87(2)(b) asked the officers why they were taking her car, and the officers told her she would have to follow behind on foot. § 87(2)(b) was transported to the stationhouse while § 87(2)(b) and her vehicle were still on scene.

Captain Delgado testified that Police Officer Dodd conducted a computer check on § 87(2)(b) s license, and that he verified the findings. He did not know whether any officer conducted a computer check on the license plate of the vehicle. After § 87(2)(b) was handcuffed and placed in the police vehicle, Captain Delgado directed Sergeant Alcantara to bring the vehicle to the stationhouse, inventory it and return it to the owner of the vehicle. Captain Delgado stated that he was not aware at the time who the vehicle owner was, but that § 87(2)(b) claimed to be the owner on scene. § 87(2)(b) provided her identification at some point, but that it was not run because “that is not something you would do in the field.” Captain Delgado did not know whether any officer asked for the vehicle registration. Captain Delgado stated that the officers could not determine the true owner of the vehicle while on scene, because § 87(2)(b) was waiting handcuffed, and in order to determine the true owner, the license plates and VIN of the car must be run, and sometimes checks done in the field can be inaccurate. Captain Delgado stated that he did not search the vehicle on scene at any point, and that no other officer did so. He did not put his hands inside the vehicle, and did not see any other officer do so.

Sergeant Alcantara testified that, once § 87(2)(b) was placed under arrest, the vehicle was searched immediately, because Sergeant Alcantara had decided to bring the vehicle to the stationhouse to be inventoried. He and Police Officer Dodd searched the front and back seats of the car, and he believed he had his body inside the plane of the vehicle. Sergeant Alcantara initially stated that whenever an arrest takes place involving a vehicle, the vehicle is brought to the stationhouse, but later clarified that if the person arrested is not the owner of the vehicle, it is not necessary to bring the vehicle to the stationhouse to be inventoried. Sergeant Alcantara stated that he was not aware on scene who the owner of the car was, and that the true owner could not

be determined on scene because sometimes the computers officers have on scene do not work, but that they did not attempt to use them to determine the owner of the car on this occasion.

Police Officer Dodd testified that Sergeant Alcantara directed that the vehicle should be brought to the stationhouse. Police Officer Dodd stated that § 87(2)(b) informed him that the car was § 87(2)(b)s, but that he was not sure whether any officer on scene asked § 87(2)(b) for her license. He stated that he did not search the vehicle on scene, or even look inside the vehicle after his initial approach. He did not know whether any other officer searched the vehicle.

Sergeant Alcantara's BWC footage (Board Review 04) shows Police Officer Dodd running § 87(2)(b)s license, with Captain Delgado's assistance. At 11:33 into Sergeant Alcantara's BWC footage, when it is determined that § 87(2)(b)s license is suspended, Captain Delgado says, "I suggest we inventory that," and Sergeant Alcantara agrees that they will bring the vehicle back to the stationhouse. After § 87(2)(b) is handcuffed, Captain Delgado asks § 87(2)(b) for her license, and she opens the trunk to retrieve it. Captain Delgado hands it to Police Officer Dodd, who puts it in his pocket. At 12:32 into the footage, § 87(2)(b) says, "You're taking my car?" and Captain Delgado responds that they are, and will inventory it at the stationhouse. At 13:44 into the footage, Sergeant Alcantara leans into the vehicle to retrieve § 87(2)(b)s shoes for her. Prior to the officers entering the vehicle to drive it to the stationhouse, neither Sergeant Alcantara nor Police Officer Dodd crosses the plane of the vehicle, and it is clear from the footage that § 87(2)(b) opened the trunk herself.

The Property Clerk Invoice prepared for the vehicle states that the vehicle was kept for "safekeeping," that the true owner of the vehicle was determined to be § 87(2)(b) at 4:55 p.m., and that it was returned to § 87(2)(b) at 8:05 p.m. (Board Review 23).

Patrol Guide Procedure 218-19 allows for a vehicle to be taken into custody to determine the true owner if the true owner *cannot* be determined on scene (Board Review 24).

The events in People v. Francis, discussed above, continue to be illustrative in evaluating the circumstances in this case. After it was determined that the driver had a suspended license, the officers decided to seize and voucher his vehicle. The vehicle passenger provided his identification, which was run on scene to determine if the passenger had any outstanding warrants. It was determined that he did not, and that his driver's license was valid, after which an inventory search was conducted on-scene (Board Review 21).

While the court acknowledged that a car that is lawfully in police custody is subject to a routine inventory search to catalogue its contents, in evaluating the legality of this custody, the court explained that "Impoundment violates the Fourth Amendment unless it is supported by probable cause to believe that the car is connected to criminal activity, or it furthers police 'community caretaking functions' such as safeguarding the streets from traffic congestion, parking violations or road hazards." Valid reasons to impound a vehicle include a reasonable basis to believe that the vehicle is evidence of a crime, that the car could not be operated because it is unregistered, uninsured or uninspected, that the vehicle was involved in a fatal vehicle accident, or that the car was driven by an unlicensed driver or a driver whose license is suspended and there is no one legally able to drive the car. Given that the no officer testified to a belief that the vehicle was

linked to criminality, it was not involved in an accident, and the vehicle passenger had a valid driver's license, meaning that he could have moved the vehicle and fulfilled the "community caretaking function," the court found the seizure in this case to be improper.

§ 87(2)(g)

§ 87(2)(b)

Allegation (E) – Abuse of Authority: At the 44th Precinct stationhouse, Captain Julio Delgado searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (F) – Abuse of Authority: At the 44th Precinct stationhouse, Police Officer Raymond Pena failed to provide § 87(2)(b) with a business card.

Once at the stationhouse, § 87(2)(b) told Police Officer Fernandez, § 87(2)(b) s arresting officer, where in her vehicle her registration was. She then observed Police Officer Dodd searching her vehicle in the parking lot. He later informed her they were vouchering the car because it was in police custody. Approximately 30 minutes later, she observed Police Officer Fernandez and Police Officer Dodd searching her vehicle again. § 87(2)(b) remained at the stationhouse until approximately 7:00 p.m., at which time § 87(2)(b) was released with a Desk Appearance Ticket, and § 87(2)(b) was told she could retrieve her vehicle. § 87(2)(b) asked officers for documentation of the time at which they seized her vehicle and the time at which she received it (approximately six hours later), and the officers told her they did not have this paperwork for her. She responded that this was bullshit, and was told by Police Officer Latanzio that she would not get her car back until the next day. After speaking with § 87(2)(b) Police Officer Latanzio stated that § 87(2)(b) could retrieve her vehicle in one hour. An hour later, she returned to do so, and asked Police Officer Pena for his business card, which he did not provide.

§ 87(2)(b)'s arrest was processed at the stationhouse, and he was released at approximately 7:00 p.m., at which point exited the stationhouse and § 87(2)(b) entered to retrieve her car. § 87(2)(b) could hear an officer tell § 87(2)(b) to get out the stationhouse, after which § 87(2)(b) exited the stationhouse and informed § 87(2)(b) she had been told she would not retrieve her vehicle until the next day. § 87(2)(b) entered and was told to return an hour. An hour later, § 87(2)(b) retrieved her vehicle while § 87(2)(b) waited outside.

Police Officer Fernandez testified that he was assigned to process § 87(2)(b)'s arrest at the stationhouse, and instructed to voucher the vehicle for safekeeping. To do so, he searched the vehicle. He stated that he was the only officer to do so. He did not recall whether § 87(2)(b) asked any officer for a business card at any point.

Police Officer Dodd testified that he conducted an inventory search at the stationhouse with Police Officer Fernandez.

Police Officer Pena did not recall this incident. He did not recognize § 87(2)(b) and did not recall her requesting his business card on May 21, 2019.

Patrol Guide Procedure 218-13 establishes that whenever an automobile is in police custody, it will be thoroughly searched and inventoried (Board Review 25).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- Captain Delgado has been a member-of-service for 22 years and has been a subject in five additional CCRB complaints and 16 allegations, none of which were substantiated.
§ 87(2)(g) [REDACTED]
[REDACTED]
- Police Officer Pena has been a member-of-service for 3 years and has been a subject in one additional CCRB complaint and one allegation, which was not substantiated. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of October 24, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 28).
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED] s court case stemming from this incident is ongoing.

Squad No.: _____

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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